

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

WENDELL PETTRY,

Plaintiff,

v.

**Civil No. 5:06cv34
(Judge Stamp)**

**DIANE SHINGLER, JAMES L. CHAPMAN,
JAMES RUBENSTEIN,**

Defendants.

OPINION/REPORT AND RECOMMENDATION

On March 6, 2006, plaintiff initiated this case by filing a civil rights complaint in the United States District Court for the Southern District of West Virginia. In the complaint, plaintiff makes several allegations concerning the conditions of his confinement at the St. Mary's Correctional Center. Because St. Mary's is located within this District, the case was transferred to this Court on March 28, 2006.

Upon an initial review of the file on May 1, 2006, the Court noted that there was a pending motion to proceed without the prepayment of fees. Moreover, it was further noted the plaintiff failed to provide the Court with all the forms necessary to determine whether he was entitled to proceed in that manner. Thus, the Clerk was directed to send plaintiff a blank Prisoner Trust Account form, to be completed and signed by an authorized agent of the Department of Corrections, and returned to the Clerk within twenty (20) days. Plaintiff was advised that the failure to timely file the completed form could result in the dismissal of his case.

A review of the file on this date shows that more than twenty days have passed since the Court issued its deficiency notice and plaintiff has not filed the necessary form, filed an extension of time to do so, or otherwise explained the reasons for noncompliance. Accordingly, it is the

recommendation of the undersigned that this case be **DISMISSED without prejudice** for the failure to prosecute.

Within ten (10) days after being served with a copy of this opinion, any party may file with the Clerk of Court written objections identifying those portions of the report and recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to this opinion will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir.), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk is directed to mail a copy of this Opinion/Report and Recommendation to the *pro se* plaintiff and any counsel of record.

Dated: June 15, 2006.


JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE